

DRAFT
**Finding of No Significant Impact for Proposed Revisions
of National Standard 1 Guidelines**

National Marine Fisheries Service
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National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria relating to the impacts of a proposed action for determining whether or not an environmental assessment is sufficient or an environmental impact statement is necessary under the National Environmental Policy Act. According to the Council on Environmental Quality's (CEQ) regulations at 40 C.F.R. section 1508.27, the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact, and has been evaluated individually, as well as in combination with others. The significance of this action is analyzed based on NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to have any immediate effect on the sustainability of any target species in any of the FMPs managed under the Magnuson-Stevens Act. Beginning about 1½ to 2 years after the effective date of the final rule for this action, some target species might receive added protection. Proposed revisions to the NS1 guidelines would require the use of OY control rules, which should result in less annual harvest of a fish stock than their corresponding MSY control rules. Such an action would likely occur when new FMPs and revised rebuilding plans for current FMPs are implemented. The extent of positive impacts for those target species would only be known at the time such rebuilding plans are submitted for Secretarial review.

The proposed revisions to the NS1 guidelines clarify NMFS' expectation that overfishing be ended in the first year of a rebuilding plan, unless circumstances are satisfied under section 304(e)(4)(A) of the Magnuson-Stevens Act.

For the most part, this action is designed to clarify the guidelines for NS1 (e.g., provide more specific guidance) to

assist regional fishery management councils and NMFS in developing or revising "overfishing" and "depleted" definitions and rebuilding schedules when necessary. Prevention and ending of overfishing is highlighted as the expectation and primary goal for fishery management; better guidance is provided as to when exceptions to this rule apply, with emphasis that such exceptions should be well justified.

The revised formula for calculating rebuilding time horizons (RTHs) would remove a discontinuity in the current formula for determining maximum permissible rebuilding time (T_{\max}). Some stocks could have a longer T_{\max} under the proposed revision, but the proposed formula makes more sense from a scientific point of view because two similar stocks should not have a much different T_{\max} when their T_{\min} values only differ by one year. Stocks might be affected by the revised formula if their rebuilding plan needs to be revised or if a fish stock has a rebuilding plan submitted for the first time after the NSI guidelines are revised. Stocks that have rebuilding plans undergoing adequate progress would not be affected by the proposed revision to the formula for calculating T_{\max} .

The proposed revised guidelines would set a default value for T_{target} midway between T_{\min} and T_{\max} . They also provide guidance on how to control F if a stock is no longer overfished, but not yet rebuilt at the end of its rebuilding plan.

The revised guidelines provide specific guidance on how to revise rebuilding plans when a Council or NMFS determines that a rebuilding plan needs revision. T_{targets} or F_{targets} or both may need to be adjusted when rebuilding over several years occurs much faster or slower than expected. The biomass target of a plan may need to be adjusted if the latest scientific estimate of that value has changed.

2) Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species? The proposed action is not expected to jeopardize the sustainability of any non-target species. Non-target species are often comparable in vulnerability to the target species of various fisheries (i.e., SDC-known species, and the stocks with unknown status related to SDC--some of which would be in the stock assemblages). The overall improvement in conservation via OY control rule and better identification and guidance on how to manage and protect stocks with unknown status related to SDC (some of which would

be in stock assemblages) should also provide better protection for non-target species.

3) *Can the proposed action be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?* Essential fish habitat has been approved for most FMPs and is being re-evaluated and identified and described for several FMPs. For some FMPs that have fisheries that use trawl or dredge gear, this action compared to the current NS1 guidelines could result in slightly less damage to ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP. This seems most evident when OY control rules would be applied for a given stock, resulting in less fishing effort and the ability to reach a higher catch per unit of effort sooner during a rebuilding plan.

4) *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?* This action is not expected to have a substantial adverse impact on public health and safety. NMFS is not aware of any differences between the current NS1 guidelines and the proposed NS1 guidelines in terms of impacts on public health and safety.

5) *Can the proposed action be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?* The proposed action is not expected to have an adverse impact on endangered and threatened species, marine mammals, or critical habitat of these species. Some FMPs already have stocks managed under OY control rules that result in less annual harvest of target species than their respective MSY control rules. Some fisheries might become managed under OY control rules that result in less harvest under the revised NS1 guidelines. Such fisheries could have less interaction with threatened and endangered species in the beginning of a new or revised rebuilding plan (because of lower fishing effort). NMFS does not believe that the proposed revisions would cause any changes in the types of gear used in fisheries or the frequency that various gear is used in fisheries.

6) *Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?* The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function

within the affected area. A small beneficial ecosystem impact may result if some fisheries are managed with OY control rules that are set lower than their corresponding MSY control rules, but the magnitude of the future benefit will depend upon the degree to which an OY control rule is less than MSY control rule, and other unknown factors.

7) *Are significant social or economic impacts interrelated with significant natural or physical environmental effects?* This action is not likely to result in any significant social or economic impacts interrelated with significant natural or physical environmental impacts. There will be no immediate economic or social impacts when the final rule for the revised NS1 guidelines first becomes effective. Management actions that incorporate the new NS1 guidelines in new or revised SDC, OY, and rebuilding plans would be evaluated for their economic and social impacts when they become known and for the most part would not begin to have such impacts until about 1½ to 2 years after the effective date of this action. For actions that have OY control rules resulting in less annual harvest than the corresponding MSY control rule, some foregone revenues and possible negative social impacts in the near term would likely be replaced with greater annual revenues and positive social impacts sooner (e.g., just a few years after the initial action).

8) *To what degree are the effects on the quality of the human environment likely to be highly controversial?* In the initial stages (the advance notice of proposed rulemaking and early draft of codified text preliminary analyses), this action has been controversial judging from the number of public comments received. NMFS is hopeful that the amount of controversy associated with this action will be reduced now that the reasoning behind its proposed revisions is better explained in the proposed rule and associated analytical documents. NMFS has also carefully considered comments received *before* the proposed rule and has modified some of its recommendations for proposed revisions to some extent. NMFS is hopeful that the revisions incorporated in the proposed rule will alleviate some of the concerns that various members of the public and special interest groups have expressed. Once the public better understands certain operating principles of the NS1 guidelines NMFS believes that this action will become less controversial.

This action consists of *guidance* (i.e., revisions to the NS1 guidelines) to help the Councils and the public address requirements of the Magnuson-Stevens Act as amended by the

Sustainable Fisheries Act. The NS1 guidelines for the most part are not absolute requirements, rather they are guidelines containing recommendations. While it is true the Magnuson-Stevens Act states that the guidelines do not have the force and effect of law, courts often refer the guidelines, in part when deciding if an action under litigation complies with the Magnuson-Stevens Act. Even when the guidelines use the term "require" or "must" those words are used in the sense of making the case that NMFS believes that such a recommendation better ensures success of the rebuilding.

For example, based on earlier public comments by environmental groups, they oppose the proposed revision to the formula for calculating T_{\max} because it would provide a larger value (more years) for T_{\max} for some stocks. However, the proposed revisions give guidance that while the choice of T_{\max} would be acceptable as a T_{target} only under certain circumstances, because such a choice is likely to reduce the chance of a successful rebuilding plan. Measures that could be controversial with some members of the fishing industry are: (1) OY must be less than MSY, and a (2) default T_{target} midway between T_{\min} and T_{\max} .

The same groups seem likely to support the proposed revision related to OY control rules, and the specific guidance provided for stock assemblages (as opposed to the lack of current specific guidance on how to manage stocks in stock complexes). It seems likely that such groups would also support the proposed revisions for a default value for T_{target} and the guidance on how to control F when a stock is no longer overfished, but not yet rebuilt at the end of its rebuilding period.

9) Can the proposed action be reasonably expected to result in substantial impacts to unique areas, such as historic or cultural resources, parkland, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas? NMFS does not believe that any such areas including historic and cultural areas, parkland, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas, or marine sanctuary areas would be impacted by the revisions to the NS1 guidelines.

10) To what degree are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks? The effects on the human environment are uncertain for future actions that have not yet been well defined, but no more so, than under the current guidelines. The proposed revisions to the NS1 guidelines do not involve unique or unknown risks.

Some fishing communities could realize some incremental benefits in increased revenues shortly after an OY control rule is added to a revised rebuilding plan because the fishery would experience higher annual yield sooner. For fishing communities dependent upon especially complex or mixed fisheries, the revised NS1 guidelines are still flexible to enough to address their needs in combination with the requirement to rebuild overfished fisheries as required in section 304 of the Magnuson-Stevens Act (i.e., the Magnuson-Stevens Act hasn't changed, but the guidelines would now repeat some of the language in section 304(e)(4)(A) of the Magnuson-Stevens Act).

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts? No, the proposed action is not related to other known actions with insignificant, but cumulatively significant impacts. This action would revise guidelines that do not have the force and effect of law. The guidelines present options and advice about how to address the requirements of the Magnuson-Stevens Act for preventing overfishing and rebuilding overfished stocks. The guidelines do not impact any fishermen or dealers or processors directly. On the other hand, the Councils, and the Secretary in the case of Atlantic highly migratory species, will use the guidelines when developing management measures that actually would affect fishermen, dealers, or processors.

Past actions would be those from the last several years, and in part, those undertaken under the NS1 guidelines as revised and effective on June 1, 1998.

Present actions would be this rule that proposes to revise NS1 guidelines, and its impacts when first implemented, along with any other actions NMFS is preparing for implementation in the near future that would affect fishing effort, marine mammal or protected species protection or conservation, or conservation of EFH, especially nationwide actions. NMFS is in the early stages of development of revisions to the guidance for identification and description of EFH, but as of January 2005, that action might remain as technical guidance only, and not be codified.

Reasonably foreseeable actions for the future would include new FMPs, actions that add new species or stocks to an existing FMP, actions that contain revised overfishing or depleted definitions or new or revised rebuilding plans. Actions that contain revised SDC or rebuilding plans are likely to include fish stocks for which the only SDC are those that were approved *before* the Sustainable Fisheries Act amended the Magnuson-

Stevens Act (pre-SFA approved). Reasonably foreseeable actions for the future would have biological, economic and social impacts and impacts on the physical environment (especially EFH) in the longer term (beginning about 1½ to 2 years after the effective date of the final rule for these revisions to the NSI guidelines). Reasonably foreseeable actions for the future also includes the likelihood that NMFS and the Regional fishery management councils will place increasing emphasis on an ecosystem approach towards management.

Cumulative impacts for the future: Regulatory actions that are based in part on guidance from the new NSI guidelines are not likely to occur immediately after the effective date of a final rule for revisions to the NSI guidelines (one example might be the Caribbean SFA Amendments that might use a management approach similar to that being proposed in this action for stock assemblages). Actions would occur incrementally over many years, when rebuilding plans are revised or new stocks are managed for the first time.

Few, if any such actions related to the proposed revisions to the NSI guidelines would occur in the initial 1 to 1½ years after this action's effective date. It takes at least that long to develop an FMP, FMP amendment or other regulatory action and to implement them through rulemaking. Additionally, the biological, economic and social impacts and impacts on the physical environment (especially EFH) would not be known until a given action with known management measures, SDC and rebuilding plans is submitted for Secretarial review. Therefore, this draft EA discusses estimates of future impacts only in qualitative terms when comparing possible impacts of the proposed action compared to other alternatives, but it is not known when, how frequent, and in what order SDC, OY and rebuilding plans would be revised, and to what magnitude.

NMFS' evaluation in the EA of *impacts of past and present actions* related to NSI indicates that: (1) In many cases, rebuilding plans already in effect before the June 1, 1998, version of the NSI guidelines were not changed much, if at all by that final rule, (2) in a large number of instances rebuilding has only begun for a given stock because a plan has been implemented very recently, (3) impacts of NSI are difficult to separate from other interrelated factors, and (4) in other cases, SFA-approved rebuilding plans are not yet in place for given fish stocks. Therefore, NMFS believes that this proposed action is not significant in terms of cumulative impacts.

Cumulative impacts for a given fishery will be assessed on a case-by-case basis as these guidelines are applied to rebuilding plans in the future.

12) *Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?* This action is not likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. This action is not likely to cause destruction of significant scientific, cultural or historical resources.

13) *Can the proposed action be reasonably expected to result in the introduction or spread of a nonindigenous species?* NMFS is not aware of any reasons why the proposed action would result in the introduction or spread of nonindigenous species.

14) *Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?* This action is not precedent-setting because the Magnuson-Stevens Act as amended by the SFA was the precedent-setting action related to these proposed revisions for the NS1 guidelines. Also, stocks currently managed under post-SFA SDC (SDC approved according to the SFA) and rebuilding plans will not be revised according to the proposed guidelines unless: (1) a rebuilding plan needs to be revised according to section 304(e)(7) of the Magnuson-Stevens Act; (2) a new F_{lim} or a new stock in an existing FMP with SDC and rebuilding plans is submitted for Secretarial review, or (3) a new F_{lim} or B_{lim} estimate is established for a fish stock. All of the same requirements in section 304 of the Magnuson-Stevens Act would still apply; the difference would be that NMFS believes that the proposed revisions provide more helpful guidance than the current guidelines on how to construct SDC and rebuilding plans for stocks under a variety of conditions (e.g., status of stock known or unknown related to SDC); and how to construct a rebuilding plan when F_{lim} is known and B_{lim} is unknown.

15) *Can the proposed action be reasonably expected to cause a violation of Federal, State, or local law or requirements imposed for the protection of the environment?* This action is not likely to impose or cause a violation of Federal, State, or

local law or requirements imposed for the protection of the environment.

16) Can the proposed action be reasonably expected to result in beneficial impacts, not otherwise identified and described above? The proposed action is not expected to result in beneficial impacts beyond those described above.

DETERMINATION

In view of the information presented in this document and the analysis contained in the attached Draft Environmental Assessment prepared for proposed revisions to the National Standard 1 Guidelines to the Magnuson-Stevens Act, it is hereby determined that the proposed revisions to the National Standard 1 guidelines will not significantly impact the quality of the human environment as described above and in the Environmental Assessment.

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